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IN THE

Supreme Court of the United States

OCTOBER TERM, 1950.

No. 558

FIRST NATIONAL BANK OF CHICAGO, AS EXECUTOR OF THE ESTATE OF JOHN LOUIS NELSON, DECEASED,
Petitioner,

vs.

UNITED AIR LINES, INC., A CORPORATION,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR CERTIORARI.

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JURISDICTION.

Petitioner has failed to show why it is important that this Court should exercise its extraordinary emergency power to issue a writ of certiorari *before judgment* in the Court of Appeals. The case is pending in that court and no questions of such gravity or importance are involved as to require this Court to settle them in advance of action by that court. This is simply an action for wrongful death. The issues raised can have no far-reaching effect even in automobile or airplane cases because only one other state (Wisconsin) has a statute even remotely similar to that portion of the Illinois statute here involved.

There is no conflict of decision; nor will the public interest be promoted by prompt settlement in this Court of the questions involved (Rules 38, 39).

As grounds for the granting of this petition, petitioner charges that the Court of Appeals has, in the past, misapplied the doctrine of *Erie R. Co.* v. *Tompkins,* 304 U. S. 64, and will probably do so again in this case, and also that this case involves a question of full faith and credit under the Constitution on which this Court should pass (petition, p. 6). Manifestly, neither of these grounds presents any emergency. If, after adjudicating this case, the Court of Appeals commits any error then it will be time enough for this Court to grant a petition for writ of certiorari if it sees fit.

The third ground advanced for the granting of this petition, involving the ruling of the District Court in refusing to transfer the case to Utah under Section 1406(a) of the Judicial Code, presents a narrow procedural question which cannot possibly have any far-reaching effect and which the Court of Appeals is fully competent to decide.

The authorities relied on by petitioner (petition, p. 4) are inapposite. *Forsyth* v. *Hammond,* 166 U. S. 506, 513, was concerned with a conflict of decision between the supreme court of a state and the court of appeals; *The Three Friends,* 166 U. S. 1, with the relations of the United States to a foreign country; *American Construction Co.* v. *Jacksonville,* 148 U. S. 372, 385, with a trial judge sitting in the same case on appeal; *St. Louis, K. C. & C. R. R. Co.* v. *W. R. R. Co.,* 217 U. S. 247, 251, with the use of railroad tracks and terminal facilities in a large city; and *Gay* v. *Ruff,* 292 U. S. 25, 30, with the right of removal to the federal courts by a receiver appointed by a federal court.

No such questions are present here. This Court should decline to exercise its jurisdiction.

QUESTIONS PRESENTED.

In addition to the above question as to petitioner's failure to show any necessity for this Court to exercise jurisdiction in advance of decision by the Court of Appeals, the following questions are also involved:

1. In a diversity suit, does not the doctrine of *Erie R. Co.* v. *Tompkins,* without violating Article III of the Federal Constitution, require the Federal courts in Illinois to recognize the public policy of Illinois, as expressed in its statute?

2. May not Illinois, without violating the full faith and credit clause of the Federal Constitution, establish a public policy prohibiting suits in Illinois on foreign death statutes in those cases where the defendant can be served in the foreign state?

3. Was not a transfer to Utah under Section 1406(a) of the Judicial Code correctly denied for two reasons: first, the action was not brought in the wrong venue; and, second, the court did not have jurisdiction of the subject matter in any event?